

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

THE HOMESOURCE, CORP.,

Plaintiff,

v.

RETAILER WEB SERVICES, LLC,
et al.,

Defendants.

Civil Action No.: 1:18-cv-11970

Hon. Eduardo C. Robreno (EDPA)

Mag. Judge Ann Marie Donio

MOTION DAY: August 3, 2020

DEFENDANTS' BRIEF TO DISMISS PURSUANT TO RULE 12(B)(5)

Pursuant to Federal Rules of Civil Procedure 12(b)(5) and 4(m), Defendants move to dismiss the unnamed John Doe defendants for insufficient service of process. Rule 4(m) states, in part, “If a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against the defendant or order that service be made within a specified time.” Fed. R. Civ. P. 4(m). More than 90 days ago, on Apr. 1, 2020, Plaintiff filed its Second Amended Complaint [Dkt. 164]. After two years of discovery, Plaintiff has still not served, or filed proof of service on the Does, nor has it shown good cause for its failure to do so.ⁱ Rule 4(m) therefore requires dismissal of the Doe defendants.ⁱⁱ

ⁱ Plaintiff named the Does as defendants in 2018 [Dkt. 12], and was granted additional time to serve them [Dkt. 74]. Yet, after nearly two years of discovery, Plaintiff still has not served them and does not know their identities. Dkt. 164 ¶¶ 63-65.

ⁱⁱ Since this brief is just one page, Defendants did not include a table of contents or authorities pursuant to L.R. 7.2(b).

Dated: July 9, 2020

Respectfully submitted,

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